

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/22/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-003465

FILED: _____

JORDAN G DANCER

DAVID T BONFIGLIO

v.

BARBARA BROWN

BARBARA BROWN
ONE E CAMELBACK ROAD
STE 550
PHOENIX AZ 85012-0000

DISPOSITION CLERK-CSC
PHX JUSTICE CT-WEST
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal from a judgment in a Forcible Detainer case pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement without oral argument since June 4, 2002 (the date Appellant's reply brief was due). This Court has reviewed the record of the proceedings from the West Phoenix Justice Court (a tape cassette), the lower court's file, and the Memoranda submitted by counsel.

The first issue raised by Appellant is that she was denied her right to a jury trial in this Forcible Detainer case heard by the West Phoenix Justice Court on January 8, 2002. Appellant had filed an answer and counterclaim and a pleading which clearly requested a jury trial in this case. Nevertheless, the

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record clearly reflects that when the case was called on January 8, 2002, Appellant's request for a jury trial was ignored by the trial judge. A notation by someone purporting to be the trial judge shows the request for jury trial was denied January 8, 2002, with no reason given.

The right of the parties in a Forcible Detainer case to a jury trial is specifically provided for in A.R.S. Section 12-1176 (A) and (B):

- A. The clerk or justice of the peace shall at the time of issuing the summons, if requested by the plaintiff, issue a venire to the sheriff or constable of the county commanding him to summon a jury of eight persons, if the proceeding is in the Superior Court, and six persons, if in the Justice Court, qualified jurors of the county, to appear on the day set for trial to serve as jurors in the action. The venire shall be served and returned on the day assigned for trial. The trial date shall be no more than five judicial days after the aggrieved party files the complaint.
- B. If the plaintiff does not request a jury, the defendant may do so when he appears, and the jury shall be summoned in the manner set forth in subsection A.

It appears from the record of the proceedings before the trial judge that when the case was called for the judge to take a plea from Appellant/Defendant, Barbara Brown, the judge began asking questions of the parties on the merits of the case. The preferred procedure in a Forcible or Special Detainer action is to call the case and ask the Defendant how they plead, whether they admit or deny the allegations contained within the complaint. This procedure offers the judge the opportunity to assess what issues should be addressed in a trial and the length of such a trial, and, more importantly, the opportunity to narrow the factual issues in a trial.

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In this case there was no trial, only conversation between the judge and both parties, with the judge asking most of the questions. It is of great concern to this court that during this "trial" the judge did not inquire of either party if they had additional witnesses, exhibits, or if they wished to conduct cross-examination of the other party.

The right to a fair trial is an important right guaranteed to litigants by the Fourteenth Amendment to the United States Constitution and guaranteed by Article II, Section 4 of the Arizona Constitution. Where a party has been denied an essential component of due process, such a denial constitutes fundamental error.¹

This Court finds that the trial judge's denial of Appellant's request for a jury trial and the "summary trial" conducted by the court without respect to the parties' rights to call witnesses, cross-examine witnesses, and present exhibits and other evidence on their own behalf denied Appellant her right of due process. This Court notes that Appellee argues that Appellant's counterclaim is insufficient and improper as a matter of law for consideration in a Forcible Detainer case. That issue has not been ruled upon by the trial court, and this Court will leave that matter to the discretion of the trial court upon remand in this case.

IT IS THEREFORE ORDERED reversing the West Phoenix Justice Court judgment of January 8, 2002 in its entirety.

IT IS FURTHER ORDERED remanding this case back to the West Phoenix Justice Court for a trial consistent with this opinion.

IT IS FURTHER ORDERED denying each party's request for costs and Appellee's request for attorney's fees in this appeal.

¹ See State v. Flowers, 159 Ariz. 469, 768 P.2d 201 (App. 1989).
Docket Code 019

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July 22, 2002

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT